IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 6927 OF 2006.

M/s.Durga Developers and Builders
and others. ... Petitioners.
Versus.
Smt.Vijaya Ulhas Patil and another. ... Respondents.

Shri Harish Pawar for the Petitioners.
Shri R.B.Mokashi for the Respondent No.1 (absent).

CORAM : ABHAY S.OKA, J.

DATED : 5th February, 2007.

P.C.:

1. Notice of final disposal is already issued. The 1st Respondent/original Plaintiff is represented by an Advocate. None appears for the First Respondent.

2. The Petitioners are the Defendants. The Petitioners applied under Order IX Rule 13 of the Code of Civil Procedure, 1908 for setting aside the exparte decree passed in the suit filed by the 1st Respondent. After the said application was filed, the Petitioners realised that there was a delay in filing the said application. Therefore, an application for condonation of delay was separately filed. By the impugned order, the said application at Exh.37 has been rejected and the Application at Exh.40 moved by the 1st Respondent for rejection of the Application at Exhibit 37 was allowed. I have heard the submissions of the learned Advocate for the Petitioners. None appears for the 1st Respondent.

The learned trial Judge held that the Application for condonation of delay filed after filing of the main Application for setting aside decree was not tenable.

3. In my view the learned trial Judge has taken a hyper technical view of the matter. It is true that the application under Order IX Rule 13 of the said Code could not have been registered without condoning the delay in filing the Application. The application for condonation of delay is now filed subsequently.

4. The Application for condonation of delay will have to be registered after de-registering the original Application under Order IX Rule 13 of the said Code made by the Applicants.

5. Hence the Petition is disposed of by the following order:

i) The impugned judgment and order dated 6th July 2006 is quashed and set aside and the Application at Exhibit 37 is restored to the file.

ii) The Trial Court will register the Application at Exhibit 37 filed by the Petitioners as a separate Miscellaneous

Application after de-registering the Application (Misc.Application 132 of 2005) under Order IX Rule 13 of the Code of Civil Procedure, 1908 filed by the said Petitioners.

iii) Only the after the Application for condonation of delay is allowed, the trial Court will register the main application for setting aside the decree.

iv) In view of the aforesaid order, the Application at Exh.40 stands rejected.

v) All contentions of the parties on the Application for condonation of delay are expressly kept open.

vi) Rule is partly made absolute in the above terms.

Judge.